

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 45.04(1)(g) relating to regulation of firewood entering and exiting department lands and affecting small businesses.

FR-20-06(E)

Summary Prepared by the Department of Natural Resources

1. **Statutes interpreted:** s. 23.091, 23.09(2)(intro), 23.11(4) 23.17, 23.175, 23.28(3), 23.293, 27.01(2)(i) and (j), and 28.04(2)Stats.
 2. **Statutory authority:** ss. 23.11(1), 227.24, 23.091, 23.09(2)(intro), 23.28(3), 27.01(2)(j), and 227.11(2)(a) Stats.
 3. **Explanation of agency authority:** Section 23.11(1), Stats., states that the department shall have and take general care, protection and supervision of all state parks, of all state fish hatcheries and lands used therewith, of all state forests, and of all lands owned by the state or in which it has any interests, except lands where the care and supervision of which are vested in some other officer, body or board; said department is granted such further powers as may be necessary or convenient to enable it to exercise the functions and perform the duties required of it by this chapter and by other provisions of the law. 23.091, 23.09(2)(intro), 23.28(3), 27.01(2)(j) and 227.11(2)(a) describe department responsibilities on specific types of properties covered in 23.11(1). Section 227.24 describes the authority to make emergency rules.
 4. **Related statute or rule:** Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has proposed changes to ch. ATCP 21 that will regulate import and movement of firewood and other host material of the emerald ash borer, Asian longhorn beetle, hemlock woolly adelgid and sudden oak death. This rule will support the proposed changes in ch. ATCP 21.
 5. **Plain language analysis:** The purpose of this emergency rule is to regulate firewood entering properties managed by the department to reduce the risk of introduction and spread of emerald ash borer and other invasive insects and diseases of trees. Currently, emerald ash borer is moving primarily on firewood and parks and campgrounds have been sites of new introductions as a result (Muirhead et al. 2006). This rule will provide additional protection for state parks and forests, set a good example for county, municipal and private campgrounds and reduce a reason people move firewood: for use while camping. While this rule may cause some inconvenience for campers, it is dwarfed by the cost of infestation or establishment of this pest to the public and the state. To minimize any inconvenience, the department is working with firewood dealers and the Wisconsin DATCP to assure a sufficient supply of safe and affordable firewood at department campgrounds.
- Invasive, foreign pests and diseases are often very destructive as native trees typically have little resistance, there are rarely effective natural enemies to regulate infestations and effective pesticides may be unavailable. Emerald ash borer is a dramatic example of this situation. Where it is established, it has eliminated all ash species in the region. Cities and towns in southeastern Michigan have been stripped of street trees and lowland forests decimated as this beetle has killed the ash trees that dominate these landscapes. Where states have tried to eradicate colonies of emerald ash borer on the leading edge of infestation, the cost of removing all ash within ½ mile of the infested tree(s) has been approximately one million dollars per site. Wisconsin is at least as vulnerable to emerald ash borer as Michigan. Thirty percent of our community trees are ash and ash species are common to dominant in our northern hardwood, central hardwood and lowland forests. Given that eradication is so expensive and destructive and establishment of this pest even worse, the best defense against this pest is prevention of importation into the state. While federal and state quarantines on nursery stock and logs have been effective, those on firewood have largely failed to prevent exportation of this pest. Most infestations distant from the core infestation in southeastern Michigan have been traced back to firewood as the source of the introduction. Recognizing this risk, the Wisconsin DATCP has proposed additional limits on movement of firewood into and within the state. The emergency rule

proposed here will support DATCP's proposed external quarantine. In the event that an infestation of emerald ash borer is discovered on a department property, movement from that property of all host material including firewood would be halted by the DATCP, minimizing the risk of spread.

The regulation of firewood into department properties will be supported by an intensive information and education program to reach campers who could be affected by the new regulation and to raise awareness of the risk posed by the movement of firewood. The department will reach out to municipal and private campground managers to educate them on why we are taking this step and encourage and support them if they decide to do likewise. The department will also work with the DATCP and firewood dealers to ensure campers have a sufficient supply of safe and reasonably priced firewood.

6. Summary of, and comparison with, existing or proposed federal regulation: The Apostle Islands National Park will prohibit bringing any firewood into the park effective May 1, 2006. Currently, the Huron-Manistee National Forest in Michigan prohibits bringing ash firewood onto the forest though enforcement is challenged by the dispersed nature of campsites.

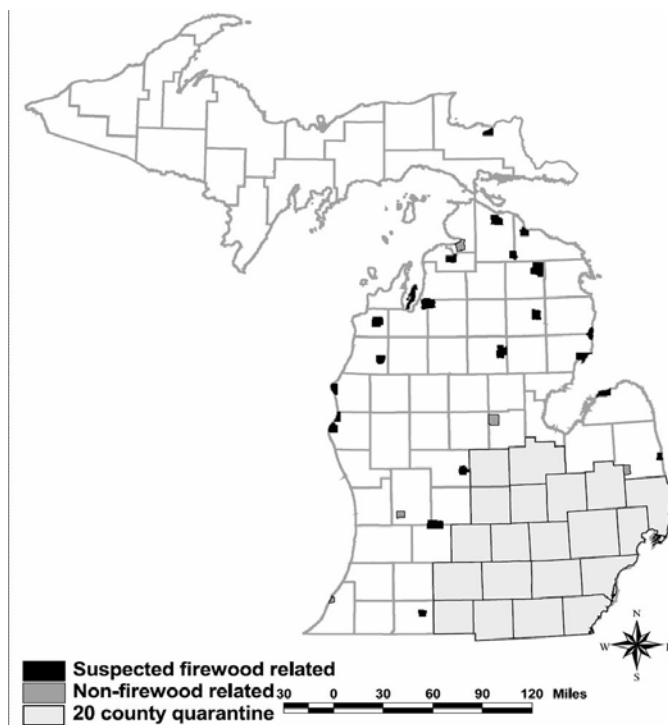
7. Comparison with rules in adjacent states: Michigan prohibits movement of ash products including firewood from the quarantined counties. Campers from quarantined areas entering Michigan parks are questioned if they brought firewood from the quarantined area and if so confiscation of firewood and fines could result. Illinois prohibits the movement of host materials including wood from the area quarantined for Asian longhorned beetle. The province of Ontario prohibits firewood from areas quarantined for emerald ash borer from entry into provincial parks and has a \$400 fine for doing so. Ontario also generally discourages bringing firewood in from a distance in order to reduce the risk of spread of EAB, Asian longhorned beetle, gypsy moth and oak wilt.

8. Summary of factual data and analytical methodologies: Firewood is generally recognized as a major source of new infestations distant from the currently established areas (Muirhead et al 2006). Figure 1. shows the outlying infestations in Michigan in 2005 and their probable source. Note that most of the colonies distant from the epicenter in the Detroit area were traced back to infested firewood brought in from the quarantined area. Quarantines on nursery stock and logs have been successful in discouraging exportation of infested host material from these sources. When such quarantines are broken, it is often detected quickly and material can be retrieved or at least the potentially infested area can be accurately delineated and treated. This happened in Maryland and Virginia where a dealer received an illegal shipment of nursery stock from Michigan. The Maryland and Virginia introductions appear to have been successfully eradicated. In contrast, much firewood is moved by individuals and there is little that can be done to regulate its movement out of a quarantined area except to try and educate the public to the risk. An external quarantine can add a second opportunity to intercept the infested host material and enforcement is often more vigorous since the people enforcing the quarantine are trying to protect their own resources.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: This rule is designed to prevent and limit the spread of invasive forest pests and diseases such as the emerald ash borer which pose a grave threat to Wisconsin forest and urban landscapes. This rule will help protect Wisconsin industries associated with tourism and forest products by protecting the resources on which they depend. Some firewood dealers may be initially impacted by this rule if they get firewood from out of state. However, there is an abundance of firewood available in Wisconsin and these dealers should be able to shift to sources that will be allowable onto department properties fairly easily and avoid these impacts.

While this rule will require campers to obtain firewood near their campsite, this small expense will be dwarfed by savings to individuals and private business in its contribution to preventing or delaying the establishment of emerald ash borer and other invasive pests and diseases. Where emerald ash borer has been introduced, eradication often costs one million dollars per site. Where this pest is established, homeowners must pay hundreds of dollars to remove yard trees killed by the beetle as well as suffer property value decline due to loss of the trees. Communities must bear the cost of removal and replacement of killed ash trees along streets and in parks. Michigan communities in have requested 6 million from FEMA to remove and replace street trees. Businesses that deal in nursery stock, logs and firewood are also impacted by establishment of emerald ash borer as markets outside the infested area no longer want their products or require costly inspections to show the shipment is pest free.

Figure I. 2005 Map of infestations of emerald ash borer and probable source of infestation.



10. **Effect on small business:** We expect that this rule will increase demand for firewood near state campgrounds and be an opportunity for many small firewood dealers. The department will work with DATCP to develop a process to identify dealers with firewood that is allowable for entry onto state properties. The department will also keep records of how much firewood is brought by campers in order to give firewood dealers a prediction of demand in future years.

11. **Agency contact person:** Dr. Andrea Diss-Torrance, 608-264-9247, Andrea.Diss@dnr.state.wi.us

12. **Place where comments are to be submitted and deadline for submission:** The deadline for submission is May 5, 2006. Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Dr. Andrea Diss-Torrance

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Division of Forestry

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Madison WI 53707

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dnrforestryrules@dnr.state.wi.us and include firewood in the subject line

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

SECTION 1. NR 45.04(1)(g) is created to read:

NR 45.04(1)(g) On department lands, no person may possess firewood that originates from outside the borders of the state of Wisconsin. Firewood includes all wood, processed or unprocessed, meant for use in a campfire.

SECTION 2. FINDING OF EMERGENCY. It is important to have restrictions on out-of-state firewood entering department lands in place this camping season due to recent developments in efforts to eradicate and quarantine emerald ash borer in the areas where it is currently established. In Michigan, Ohio, Indiana and Ontario, eradication programs are being dramatically scaled back or abandoned entirely for this summer. A recent audit of quarantine efforts in Michigan where emerald ash borer is most abundant and widespread is critical and faults their program for lax enforcement and poor education of the public to the dangers of moving firewood. Given this situation, a need for an external quarantine to protect Wisconsin forest resources, industry, and community trees becomes obvious. The Wisconsin Department of Agriculture, Trade and Consumer Protection has proposed an external quarantine on host material of emerald ash borer and three other invasive pests and diseases and our firewood regulation would help support this effort, provide an opportunity for education of the public and reduce one of the reasons people move firewood: for use while camping.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on April 1.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)